

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Priority	_____
Send	_____
Enter	_____
Closed	_____
JS-5/JS-6	_____
Scan Only	_____

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 2015TITLE: United States of America v. Elton L. Barnes, Jr.

=====
PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz
Courtroom ClerkNot Present
Court Reporter

COUNSEL PRESENT FOR PLAINTIFF(S):

COUNSEL PRESENT FOR DEFENDANT(S):

Not Present

Not Present

=====
PROCEEDINGS (in chambers): ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT [Docket No. 34]

This matter is before the Court on Plaintiff United States of America's ("Government") Motion for Default Judgment against Defendant Elton L. Barnes Jr. ("Mr. Barnes" or "Defendant"), filed February 9, 2015. (Notice of Motion and Motion for Default Judgment ("Motion"), ECF No. 34.) The Government filed a Notice of Non-Receipt of Opposition to Motion for Default Judgment on March 3, 2015. (Notice of Non-Receipt, ECF No. 35.) The Court found the motion suitable for disposition without oral argument and vacated the hearing on the motion set for March 16, 2015. See Fed. R. Civ. P. 78(b). For the following reasons, the Court **GRANTS** the Government's Motion.

I. PROCEDURAL BACKGROUND

On July 21, 2014, the Government filed a complaint against Barnes seeking to permanently enjoin him from doing any of the following:

[P]reparing federal tax returns or assisting in the preparation of federal tax returns for any person other than himself; engaging in any action that is subject to penalty under 26 U.S.C. § 6694 or § 6695, or any criminal conduct prohibited by Title 26 of the United States Code; and engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the federal internal revenue laws.

(Compl. ¶ 1, ECF No. 1.)

On July 23, 2014, the Government filed a Motion for Preliminary Injunction, (Motion for Preliminary Injunction, ECF No. 7), which was granted pursuant to 26 U.S.C. section 7407(b) ("Section 7407"). (Order Granting Preliminary Injunction ("Order"), ECF No. 33.) Barnes has yet to plead or

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 2015

otherwise defend this action. Accordingly, on January 26, 2015, the Clerk entered default. (Entry of Default, ECF No. 32.)

II. FACTUAL BACKGROUND

Prior to commencement of the instant civil action, Barnes was criminally convicted for preparing fraudulent tax returns. (Mem. in Supp. of United States' Mot. for Prelim. Inj. ("Mot.") 7, ECF No. 8.) In 2003, in the case *United States v. Barnes*, No. CR 02-00189 AHS (C.D. Cal.), Barnes pled guilty to and was convicted of one count of aiding and assisting in the preparation of false tax returns in violation of 26 U.S.C. § 7206(2). (See Mot. 7-8; Decl. of Adam D. Strait in Supp. of [Mot.] ("Strait Decl.") ¶ 1, ECF No. 12, Ex. A ("Crim. Docket") 6-7, 12 (summarizing disposition of counts 1 and 24), ECF No. 12-1; see Strait Decl. ¶ 11, Ex. H (plea agreement), ECF No. 12-8.) Following his guilty plea, Barnes was sentenced to two years in prison, followed by three years of supervised release. (Crim. Docket 6-7.)

One of the conditions of Barnes' supervised release was that he refrain from preparing income tax returns for any person other than himself. (See Strait Decl. Ex. B 26¹, ECF No. 12-2.) After his release, Barnes violated that condition. (Strait Decl. Ex. B 26.) As a result, his supervised release was revoked, and he was sentenced to an additional 18 months in prison, followed by 364 days of supervised release. (Strait Decl. Ex. C, ECF No. 12-3.) After the case was remanded by the Ninth Circuit, *United States v. Barnes*, 258 Fed. Appx. 95 (9th Cir. 2007), the same sentence was imposed, with Barnes to surrender at 12:00 pm on March 21, 2008. (See Strait Decl. Ex. E 2.) Barnes failed to appear on his self-surrender date and remained a fugitive until November 13, 2008. (See Strait Decl. Ex. F.) The Government alleges that Barnes may have been soliciting business for a tax-return preparation business between January and November 2008 while out on bond and awaiting re-sentencing. (Mot. 9; see Decl. of Revenue Agent Brandon Vien in Supp. of [Mot.] ("Vien Decl.") ¶ 5, ECF No. 11, Ex. A ("Bruce Notes") 5 (soliciting business at grocery store), ECF No. 11-1.)

On May 26, 2009, Barnes was released from custody. (Strait Decl. Ex. G, ECF No. 12-7.) On July 17, 2009, two tax refunds issued to individuals other than Barnes were deposited in a bank account held in Barnes' name. (Decl. of Revenue Agent Ryan Dino in Supp. of [Mot.] ("Dino Decl.") ¶ 8, ECF No. 9, Ex. B, ECF No. 9-2.) Additionally, the Government cites to five examples of Barnes' alleged proscribed conduct as a tax preparer during the period from 2008 to 2014 in support of its Motion.

¹ This citation refers to the page numbered 26 in the bottom left corner for Exhibit B to the Strait Declaration. In acknowledgment of the Government's numbering convention, when the Court refers to a certain page number within one of the Government's exhibits, it uses the page number designated by the Government.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 2015A. Dawn and Shane

Dawn and Shane were referred to Barnes by Shane's colleagues. (Decl. of Revenue Agent Martha Rangel in Supp. of [Mot.] ¶¶ 4-5, ECF No. 10, Exs. A ("D-S Notes") 5, B ("D-S Fact Sheet") 10, ECF Nos. 10-1, 10-2.) Barnes told Dawn and Shane that their tax returns had previously been filed incorrectly, and that he would amend them. (See D-S Notes 5; D-S Fact Sheet 10.) In exchange for this service, Barnes charged a flat fee of \$250 per return, plus 10% or 20% of the refund Dawn and Shane received from the Internal Revenue Service ("IRS"). (D-S Notes 5; *compare* D-S Notes 6 with D-S Fact Sheet 10.) Barnes promised that the IRS would not audit the returns. (D-S Notes 5.)

The returns Barnes prepared increased the deductions Dawn and Shane had claimed by tens of thousands of dollars. (See Dino Decl. ¶¶ 29-31.) For 2010, Barnes increased their charitable contribution deduction claim from \$2,815 to \$16,986, and he added a new sole proprietorship business that was not on the original return, but suffered \$47,995 in net losses. (Dino Decl. ¶ 29.) For 2011, Barnes increased the charitable donation deduction from \$4,455 to \$17,648. (Dino Decl. ¶ 31.) Additionally, Shane's "consultant" sole proprietorship, which had shown a net profit of \$379 on the original return, was changed into an "electrician" sole proprietorship with a \$48,470 loss. (Dino Decl. ¶ 31.) The IRS ultimately disallowed Dawn and Shane's refund claims, but only after the return had been processed and \$28,017 had been paid. (Dino Decl. ¶ 32.) The Government alleges that all of the changes Barnes made to Dawn and Shane's tax returns lacked any factual basis and were fabricated in order to increase the refund Dawn and Shane could claim. (Mot. 3-4.)

B. Robin and Dawn

In June 2012, Robin and Dawn paid Barnes \$700 to prepare amended 2009, 2010, and 2011 federal income tax returns. (See Dino Decl. ¶¶ 39-40, Exs. R ("R-D Notes") 147, S (payment check), ECF Nos. 9-18, 9-19.) Barnes had been referred to Robin and Dawn by a family member, and told them that he was familiar with tax laws and IRS procedures, and that their return would be correctly prepared in order to maximize the refund. (R-D Notes 147.) Other than requesting their returns, Barnes did not take any receipts or other documentation from Robin and Dawn, ask them to complete a questionnaire, or discuss the specifics as to how he planned to maximize their refund. (R-D Notes 147.)

In preparing the 2009 and 2010 income tax returns for Robin and Dawn, and without receiving any documentation or receipts, Barnes increased the cash charitable contribution deduction for the 2009 and 2010 returns by \$7,921 and \$2,976, respectively. (Dino Decl. ¶¶ 34-37, Exs. P, Q.) Barnes also added other deductions, including a claim that Robin and Dawn were entitled to deduct more than \$30,000 each year due to net operating losses from a purported sole proprietorship business owned by Robin. (See Dino Decl. ¶¶ 35, 37; Mot. 4.)

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 2015C. Sam

In November 2012, Sam paid Barnes, using the business name "McNair Group," \$600 to prepare his tax return. (See Dino Decl. ¶¶ 40, 45, Ex. V, ECF No. 9-22.) Barnes filed a 2012 return on Sam's behalf in February 2013. (See *generally* Dino Decl. ¶ 41, Ex. T ("Sam Return"), ECF No. 9-20.) Barnes failed to sign the return as a paid preparer. (See Sam Return 155.) However, the refund check was directed to an account controlled by Barnes. (See Dino Decl. ¶¶ 41, 43-44; *compare* Sam Return 154 *with* Dino Decl. Ex. U, ECF No. 9-21.) The return overstated the amount of taxes withheld from Sam's paychecks by \$20,000. (Dino Decl. ¶ 46; *compare* Sam Return 154, *with* Dino Decl. ¶ 46, Ex. W 180, ECF No. 9-23.)

Sam's return, like Dawn and Shane's return, also contains a Schedule C claiming that Sam had a sole proprietorship business with \$38,537 in total expenses and \$3,455 in income. (*Compare* Sam Return 162, *with* Dino Decl. ¶ 28, Ex. M 83 (claiming sole proprietorship losses).) The return also claims deductions for un-reimbursed employee expenses. (See Sam Return 160.)

D. Bruce

Bruce met Barnes at a grocery store in 2008, where Barnes was attempting to solicit business for a tax preparation business. (Bruce Notes 5.) Bruce approached Barnes and asked him whether or not he would be able to receive a tax benefit based on his home mortgage interest expense. (Bruce Notes 5-6.) The following week, Bruce met with Barnes and gave Barnes copies of his Form 1098 and other personal information. (Bruce Notes 6.) Bruce had no further contact with Barnes. (Bruce Notes 6.)

On October 14, 2009, unbeknownst to Bruce, a 2008 federal income tax return was filed in his name. (Dino Decl. ¶¶ 47-49; Vien Decl. ¶ 2; see *generally* Dino Decl. Ex. X ("Bruce Return"), ECF No. 9-24.) The return falsely stated that Bruce worked for Los Angeles County, (see Bruce Return 187; Dino Decl. ¶¶ 49-50), and claimed a refund of \$21,424 that was to be deposited into a bank account held in Barnes' name. (See Bruce Return 186; Dino Decl. ¶ 51, Ex. Z, ECF No. 9-26.)

E. Jason

Jason filed two tax returns for 2009 and 2010, but otherwise did not file a tax return between 2004 and 2013. (See Dino Decl. ¶ 52.) On Jason's 2009 return, Jason's address was given as the same home address Barnes listed on his own tax return. (See Dino Decl. ¶ 55.) The 2009 return claimed that Jason earned \$48,779 in wages and had \$14,553 in federal income tax withheld from his paycheck. (Dino Decl. ¶ 56, Ex. BB 204, ECF No. 9-28.) Both of these statements were false and in fact there was no employer with the identification number listed on Jason's W-2. (Dino

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 2015

Decl. ¶ 57.) The IRS issued the requested refund through a refund anticipation loan provider. (Dino Decl. ¶ 58.)

On the 2010 return, the address given for Jason was the same one listed as Barnes' business and residence. (See Dino Decl. ¶¶ 13, 60; *compare* Dino Decl. Ex. CC 219, *with* Dino Decl. Ex. F 44 (same address).) Jason was listed as an employee of Riverside School District, with wages of \$36,775 and withheld federal income tax of \$7,446. (Dino Decl. ¶ 61.) This statement was also false, and the Riverside School District had never provided a W-2 for Jason to the IRS. (Dino Decl. ¶ 62.) The IRS again issued the refund and routed it through a refund anticipation loan provider. (Dino Decl. ¶ 63.)

III. DISCUSSIONA. Legal Standard for Default Judgment

To obtain default judgment, a plaintiff must satisfy the procedural requirements of Federal Rule of Civil Procedure ("Rule") 55 and show that the substantive factors outlined in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), favor default judgment.

B. Procedural Requirements for Default Judgment

Obtaining default judgment is a two-step process. First, the plaintiffs must establish default by affidavit or otherwise, and if established, the clerk enters the defendants' default. See Fed. R. Civ. P. 55(b)(2). The plaintiffs' motion for default judgment must include a declaration showing the following:

- (1) when and against what party default was entered;
- (2) the pleading to which default was entered;
- (3) that the defaulting party is not an infant or incompetent person;
- (4) that the defaulting party is not in military service such that the Soldiers' and Sailors' Civil Relief Act of 1940 does not apply; and
- (5) that notice has been served on the defaulting party, if the defaulting party has appeared in the action or if the damages sought are unliquidated.

L.R. 55-1; *see also* Fed. R. Civ. P. 55(b)(2).

The Government submitted the Declaration of Adam Strait in support of its Motion for Default Judgment. (Motion for Default Judgment, Second Decl. of Adam D. Strait in Supp. of Motion ("Second Strait Decl."), ECF No. 34-3.) The Government satisfied these procedural requirements. In its Motion, the Government states that: (1) default was entered by the Clerk on January 26, 2015; (2) Barnes has not responded to the Government's Amended Complaint; (3) based on

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)

DATE: April 3, 2015

review of the administrative files provided to the Government by the IRS, Barnes is not a minor nor has he been adjudicated incompetent; (4) Barnes is not an active-duty service member; and (5) Barnes was served with the Motion for Entry of Default Judgment, the Proposed Permanent Injunction, the Memorandum in Support of the Motion, and the Second Declaration by first-class mail, postage prepaid, to the residential address in Lawndale, California where service was made to a private mailbox address for Barnes. (Second Strait Decl. ¶¶ 3-6.)

The Court finds the supporting declaration satisfies the requirements of Local Rule 55-1.

C. Substantive Requirements for Default Judgment

The Court has discretion to enter default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The Ninth Circuit has identified seven factors district courts should use in guiding that discretion:

- (1) The possibility of prejudice to the plaintiff;
- (2) The merits of plaintiff's substantive claim;
- (3) The sufficiency of the complaint;
- (4) The sum of money at stake in the action;
- (5) The possibility of a dispute concerning material facts;
- (6) Whether the default was due to excusable neglect; and
- (7) The strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation omitted). The Court considers each of the *Eitel* factors in turn.

1. The Possibility of Prejudice to the Plaintiff

Here, the Government has made a strong showing of prejudice if Barnes is not permanently enjoined from preparing tax returns. The IRS has rejected refund claims totaling more than \$820,000 and determined tax deficiencies totaling more than \$1,160,000 made on tax returns prepared by Barnes. (FAC ¶¶ 32-33.) These figures are telling because they represent only tax returns that the IRS was able to examine and determine were prepared by Barnes. (FAC ¶ 34.) The IRS still has not completed its examination of all the tax returns prepared by Barnes and it is likely that a number of returns may remain undetected due to Barnes conduct of not signing returns. (FAC ¶ 34.) In addition to the obvious harm to the public fisc, if Barnes is not permanently enjoined, the Government will have to continue to expend limited enforcement resources to counter Barnes' continued violations. Accordingly, the Court finds that the first factor weighs in favor of the Government.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)

DATE: April 3, 2015

2, 3. The Merits of Plaintiff's Substantive Claim and the Sufficiency of the Complaint

a. 26 U.S.C. § 7407 ("Section 7407")

Under 26 U.S.C. section 7407(a), the United States may seek "to enjoin any person who is a tax return preparer from further engaging in any conduct described in subsection (b) or from further acting as a tax return preparer." 26 U.S.C. § 7407(b). Under 26 U.S.C. section 7407(b)(1)(A)-(D), the Court may enjoin a tax preparer who has:

- (A) engaged in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title,
- (B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as a tax return preparer,
- (C) guaranteed the payment of any tax refund or the allowance of any tax credit, or
- (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws.

26 U.S.C. 7407(b)(1)(A)-(D).

If the tax preparer engages in the above conduct and "injunctive relief is appropriate to prevent [its] recurrence," the court may issue an injunction against the misconduct. 26 U.S.C. 7407(b)(2). Moreover, "[i]f the court finds that a tax return preparer has continually or repeatedly engaged in any conduct described in subparagraphs (A) through (D) of this subsection and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, the court may enjoin such person from acting as a tax return preparer." *Id.*

As discussed above, as well as in this Court's previous Order Issuing Preliminary Injunction, (Order, ECF No. 33), the First Amended Complaint alleges multiple specific instances of Barnes' misconduct covered by Section 7407. Barnes has not answered the Government's First Amended Complaint, nor has he opposed the Motion for Default Judgment. Therefore, "upon default, factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (internal quotation marks and citation omitted). The government has presented a strong claim against Barnes supported by evidence that Barnes engaged in the proscribed conduct. Accordingly, the Court finds the second and third factors weigh in favor of default judgment.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 20154. The Sum of Money at Stake in the Action

Under the fourth *Eitel* factor "the court must consider the amount of money at stake in relation to the seriousness of [the d]efendant's conduct." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). In general, "[d]efault judgment is disfavored when a large amount of money is involved or unreasonable in light of the potential loss caused by the defendant's actions." *Li v. A Perfect Day Franchise, Inc.*, No. CV 10-01189 LHK, 2012 WL 2236752, at *11 (N.D. Cal. June 15, 2012) (citation omitted). Here, the Government is not seeking damages from Barnes, but rather to deprive him of a source of income through the use of an injunction. When there is no money at stake in an action and only permanent injunctive relief is sought, the fourth *Eitel* factor weighs in favor of default judgment. See *United States v. McIntyre*, 715 F. Supp. 2d 1003, 1008 (C.D. Cal. 2010); *Gordon v. Me & You, Inc.*, No. CV 12-02183 MMD, 2014 WL 2770290, at *4 (D. Nev. June 18, 2014). Accordingly, the Court finds that the fourth factor weighs in favor of default judgment.

5. The Possibility of a Dispute Concerning Material Facts

"The fifth *Eitel* factor examines the likelihood of a dispute between the parties regarding the material facts surrounding the case." *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010); see also *Eitel*, 782 F.2d at 1471-72. "Where a plaintiff has filed a well-pleaded complaint, the possibility of dispute concerning material facts is remote." *TVB Holdings (USA), Inc. v. eNom, Inc.*, No. CV 13-00624 JLS, 2014 WL 3717889, at *3 (C.D. Cal. July 23, 2014.) (citations omitted). Here, the Government's Complaint is supported by evidence and well-pleaded in that it has alleged sufficient facts, taken as true, to state a claim. See *PepsiCo*, 238 F. Supp. 2d at 1175; see also *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Further, by failing to oppose the Motion for Default Judgment, Barnes has admitted all material facts in the Government's pleading. See *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1012-13 (C.D. Cal. 2014). Since there are no factual disputes the fifth *Eitel* factor favors entry of default judgment.

6. Excusable Neglect

"The sixth *Eitel* factor considers whether [the] defendant's default may have been the product of excusable neglect." *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 922 (citing *PepsiCo*, 238 F. Supp. 2d at 1177; *Eitel*, 782 F.2d at 1472). "This factor favors default judgment when the defendant has been properly served or the plaintiff demonstrates that the defendant is aware of the lawsuit." *TVB Holdings*, 2014 WL 3717889, at *4 (citing *Landstar Ranger*, 725 F. Supp. 2d at 922). "A defendant's conduct is culpable, rather than excusable, if the defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)DATE: April 3, 2015

received actual or constructive notice of the filing of the action and failed to answer." *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir.1987).

Here, the Government properly served a summons, Amended Complaint and Motion for Entry of Default on Barnes giving Barnes actual and constructive notice of the instant action. (See Decl. of George Sano Re. Service of Process (Sano Decl.)); *Rockstar, Inc. v. Rap Star 360 LLC*, No. CV 10-00179 LRH, 2010 WL 2773588, at *3 (D. Nev. July 8, 2010). Barnes did not provide an answer to this Court. (See Mem. in Supp. of United States' Mot. for Default ("Mot. 2") ECF No. 34.) Barnes also signed a stipulation to extend his time to oppose the Government's Motion for Preliminary Injunction. (Stipulation for Extension of Time to File Response, ECF No. 18.) The Government has provided evidence that shows Barnes was aware of the pending litigation and therefore this factor weighs in favor of default judgment. See *Craigslist, Inc.*, 694 F. Supp. 2d at 1061.

7. Policy Favoring Decision on the Merits

The final *Eitel* factor requires the Court to consider the strong federal policy in favor of making decisions on the merits. *Eitel*, 782 F.2d at 1472. Courts have recognized, however, that "this preference, standing alone, is not dispositive." *PepsiCo*, 238 F. Supp. 2d at 1177 (citing *Klopping v. Fireman's Fund*, No. CV 94-02684 TEH, 1996 WL 75314, at *3 (N.D. Cal. Feb. 13, 1996)). Moreover, a defendant's failure to answer a plaintiff's complaint "makes a decision on the merits impractical, if not impossible." *PepsiCo*, 238 F. Supp. 2d at 1177; see also *TVB Holdings*, 2014 WL 3717889, at *4 (citation omitted). Thus, under Federal Rule of Civil Procedure 55 ("Rule 55"), "termination of a case before hearing the merits is allowed whenever a defendant fails to defend an action." *PepsiCo*, 238 F. Supp. 2d at 1177. Given that Defendants have failed to file an answer to the operative Complaint and Barnes has not opposed the instant Motion, the final *Eitel* factor weighs in favor of default judgment.

8. Balancing the *Eitel* Factors

On balance, the Court finds that the application of the *Eitel* factors weighs strongly in favor of granting the Government's Motion. The Court considers the requirements for a Permanent Injunction below.

D. Requirements for Permanent Injunction

To obtain a permanent injunction prohibiting Defendants from acting as federal tax return preparers pursuant to 26 U.S.C. section 7407, the Government must establish that: (1) defendant engaged in conduct subject to penalty under 26 U.S.C. section 6694 or 26 U.S.C. section 6695 or "engaged in any other fraudulent or deceptive conduct which substantially interferes with the

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)

DATE: April 3, 2015

proper administration of the Internal Revenue laws", (2) injunctive relief is appropriate to prevent the recurrence of such conduct", and (3) defendant "continually or repeatedly engaged" in the proscribed conduct such that a more limited injunction prohibiting the misconduct "would not be sufficient to prevent such person's interference with the proper administration of this title[.]" 26 U.S.C. 7407(b); *see also United States v. Kapp*, 564 F.3d 1103, 1109 (9th Cir. 2009); *United States v. Nordbrock*, 828 F.2d 1401, 1403 (9th Cir. 1987) (stating that any violation of Sections 6694 or 6695 must be willful in order to be "subject to penalty"). Section 6694 prohibits the knowing understatement of tax liability by a tax return preparer due to either: (1) the taking of an "unreasonable position" (i.e. those not supported by "substantial authority" under subsection 6694(a)(2)); or (2) understatement due to willful or reckless conduct. 26 U.S.C. § 6694(a)-(b). The "traditional requirements for equitable relief need not be satisfied" where injunction is authorized by statute setting forth requisite elements. *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000). The Government must prove each element by a preponderance of the evidence. *Kapp*, 564 F.3d at 1109 (citation omitted).

Here, the Government has made a sufficient showing that Defendant has violated section 6694 by: (1) taking an "unreasonable position" unsupported by "substantial authority"; and (2) willfully filing fraudulent tax returns with intentional disregard of the tax rules and regulations. In each of the examples described above, Barnes has understated the liability of the taxpayer by increasing their charitable contributions (Dawn and Shane, Robin and Dawn), manufacturing sole proprietorships with net losses (Dawn and Shane, Robin and Dawn, Sam), or fabricating the amount of taxes withheld on paychecks (Sam, Jason, Bruce). For each of Barnes' alleged violations, as explained above, there was no factual basis, let alone a reasonable factual basis, for his positions. Moreover, the Government has made a sufficient showing that Barnes violated Section 6695 by failing to sign and provide his identifying number on returns he prepared, (*see, e.g., Sam Return 155*), and failing to provide the IRS with a list of his clients when requested. (*See Dino Decl. ¶ 10, Ex. C, ECF No. 9-3.*) *See* 26 U.S.C. §§ 6695(b)-(d). Finally, Barnes has caused clients' refund checks to be deposited into his own accounts or accounts under his control. (*See Bruce Return 186; Dino Decl. ¶ 51, Ex. Z, ECF No. 9-26.*) *See* 26 U.S.C. § 6695(f).

The Government also argues that Barnes violated Section 7407 by engaging in "other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws." 26 U.S.C. § 7407(b)(1)(D). (Mot. 14.) In the cases of Bruce and Jason, the Government maintains that Barnes may have attempted to file false returns without the taxpayers' authorization and then collect the refund credits. These allegations, supported by the extensive documentation provided by the Government, are sufficient to show, by a preponderance of the evidence, that Barnes has engaged in the proscribed conduct necessary to warrant the issuance of an injunction. *See Kapp*, 564 F.3d at 1109.

III. CONCLUSION

For the aforementioned reasons, the Court **GRANTS** Plaintiff's Motion for Default Judgment.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO.: CV 14-05621 SJO (PLAx)

DATE: April 3, 2015

Defendant Elton L. Barnes, Jr., doing business under any name—including but not limited to McNair Group, So Cal Financial Services, and Anderson Investment Group—and anyone else who is in active concert or participation with him are **HEREBY ENJOINED** as follows:

- A. Barnes shall not prepare, or assist in any way in preparing, any federal tax return for any person other than himself.
- B. Barnes shall not use, or assist in any way in using, any electronic filing system for federal tax returns for any reason.
- C. Barnes shall take no action that causes or allows any federal tax refund for any person, other than himself, to be deposited into a bank account he controls. If any federal tax refund for another person is deposited in a bank account that Barnes controls, Barnes shall, within 48 hours, pay the same amount by cashier's check to the person in whose name the refund was issued.
- D. Barnes shall not engage in any other action that is subject to penalty under 26 U.S.C. § 6694 or 26 U.S.C. § 6695.
- E. Barnes shall not engage in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the federal internal revenue laws.
- F. If Barnes has not yet done so, within 30 days of the entry of this Permanent Injunction, Barnes shall provide counsel for the United States with a list containing the name, address, and telephone number for every person that has engaged him to prepare any federal tax return since January 1, 2014, so that a copy of this Permanent Injunction may be served upon each person.

IT IS SO ORDERED.